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32864	7590	12/26/2008	EXAMINER	
FISH & RICHARDSON, P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			ZELASKIEWICZ, CHRYSTINA E	
			ART UNIT	PAPER NUMBER
			3621	
			NOTIFICATION DATE	DELIVERY MODE
			12/26/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary

Application No.

10/784,848

Applicant(s)

GERNOLD, PETER

Examiner

CHRYSTINA ZELASKIEWICZ

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 10-15 and 19-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 10-15 and 19-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. Receipt is acknowledged of a request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e) and a submission, filed on November 12, 2008.

Status of Claims

2. This action is in reply to the Request for Continued Examination filed on November 12, 2008.
3. Claims 1, 10, 19 have been amended.
4. Claims 21-26 have been added.
5. Claims 7-9, 16-18 have been canceled.
6. Claims 1-6, 10-15, 19-26 are currently pending and have been examined.

Claim Rejections - 35 USC § 112, 2nd paragraph

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. **Claims 19-20, 21, 23-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**
9. Claim 19 states "one or more input/output devices." The slash, "/", is vague and indefinite because it could mean "and" or "or." For prior art purposes, Examiner will assume "one or more input or output devices."
10. Claim 21 states "for a particular result." This phrase is vague and indefinite because "particular" is subjective in meaning. For prior art purposes, Examiner will assume "for a result."
11. Claim 23 states "through indirect association." This phrase is vague and indefinite because "indirect" is subjective in meaning. For prior art purposes, Examiner will assume "through association."
12. In light of Applicant's amendments, the former rejections are withdrawn.

Claim Rejections - 35 USC § 101

13. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

14. **Claims 10-15, 21-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

15. Based on Supreme Court precedent¹ and recent Federal Circuit decisions, § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing². If neither of these requirements is met by the claim(s), the method is not a patent eligible process under 35 U.S.C. § 101.

16. In this particular case, claim 10 is directed to a "computer-implemented method" with steps for receiving, storing, executing, identifying, and generating. However, the method of claim 10 is not tied to another statutory class, and does not transform the underlying subject matter to a different state or thing.

Claim Rejections - 35 USC § 103

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. **Claims 1-6, 10-15, 19-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bracho et al. (US 5,870,605) in view of Cheng et. al. (US 5,884,324).**

¹ *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

² The Supreme Court recognized that this test is not necessarily fixed or permanent and may evolve with technological advances. *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972).

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Claims 1, 10, and 19

19. Bracho discloses the following limitations:

- a. receive a user input (subscription) identifying a type of data (event type) to be distributed to data sites (subscribers) (C8 L38-51);
- b. receive a user input (subscription) identifying a distribution criterion (filter indicating certain values in certain fields) that defines the basis upon which the type of data (event type) is to be distributed to the data sites (subscribers), the distribution criterion comprising a query (expression string) executable against portions of application data (C8 L38-51, C11 L23-52);
- c. store the type of data to be distributed and the distribution criterion (all input and output) for use in generating data subscriptions in a network (hub) of distributed computer systems operating an application program having application data of various data types (C10 L26-30);
- d. execute the query (expression string) against portions of the application data (incoming flow of events) to identify at least one result (match) (C11 L23-52);
- e. identify at least one of the data sites (subscriber) to which the type of data (event type) is to be distributed using the at least one result (match) of the executed query (C8 L38-51, C11 L23-52); and
- f. generate data subscriptions for the type of data (event type) to be distributed to data sites (subscribers) by automatically assigning the data subscriptions (sends the event to the matching subscriber) to the at least one of the data sites identified using the at least one result of the executed query (filter) (C8 L38-51, C11 L23-52, C14 L26 – C16 L3).

20. Bracho does not disclose the following limitations:

- g. computer systems operating an application program having application data of various data types.

21. Cheng discloses the following limitations:

- h. computer systems (computer) operating an application program (software programs) having application data of various data types (C3 L10-40).

22. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Bracho with Cheng because 1) the ability to store, retrieve, and manage massive amounts of information has become a virtual necessity in business today (Cheng C1 L14-16) and 2) only the appropriate subscribers should receive published events on the network (Bracho C2 L16-20). Having computer systems operating application programs helps manage massive amounts of information, and ensure only the appropriate subscribers receive published events.

Claims 2 and 11

23. Bracho, in view of Cheng, discloses the limitations above. Furthermore, Bracho discloses the following limitations:

- i. the type of data to be distributed to data sites comprises a business object type ("SalesOrder" events) (C6 L19-20).

Claims 3 and 12

24. Bracho, in view of Cheng, discloses the limitations above. Furthermore, Bracho discloses the following limitations:

- j. the type of data to be distributed to data sites comprises a publication (C5 L9-11).

Claims 4 and 13

25. Bracho, in view of Cheng, discloses the limitations above. Furthermore, Bracho discloses the following limitations:

- k. the distribution criterion comprises an attribute (event attribute names) of the type of data to be distributed (C11 L23-52).

Claims 5, 14, and 20

26. Bracho, in view of Cheng, discloses the limitations above. Furthermore, Cheng discloses the following limitations:

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l. the distribution criterion comprises a distribution criterion based on a relationship of data (authorized to access) with an employee (remote user) that uses a data site (DBMS 108) (C4 L7-17).

27. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Bracho with Cheng because 1) the ability to store, retrieve, and manage massive amounts of information has become a virtual necessity in business today (Cheng C1 L14-16) and 2) only the appropriate subscribers should receive published events on the network (Bracho C2 L16-20). Having the distribution criterion based on a relationship of data with an employee ensures only appropriate subscribers (i.e. employees) receive the published events.

Claims 6 and 15

28. Bracho, in view of Cheng, discloses the limitations above. Furthermore, Cheng discloses the following limitations:

m. the distribution criterion comprises a distribution criterion based on a responsibility (authorized to access) of an employee (remote user) that uses a data site (C4 L7-17).

29. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Bracho with Cheng because 1) the ability to store, retrieve, and manage massive amounts of information has become a virtual necessity in business today (Cheng C1 L14-16) and 2) only the appropriate subscribers should receive published events on the network (Bracho C2 L16-20). Having a distribution criterion based on a responsibility of an employee ensures that only appropriate subscribers receive published events.

Claim 21

30. Bracho, in view of Cheng, discloses the limitations above. Furthermore, Bracho discloses the following limitations:

n. identifying at least one of the data sites (subscribers - hub) to which the type of data (event type) is to be distributed using the at least one result of the executed query comprises

creating a new data site assignment (new subscription system event) for a particular result of the executed query when the particular result of the executed query is not assigned (whether match exists or not) to a data site (C8 L38-51, C11 L23-52, C13 L7 – C14 L25);

o. generating data subscriptions for the type of data to be distributed to data sites by automatically assigning the data subscriptions to the at least one of the data sites identified using the at least one result of the executed query comprises automatically assigning a data subscription (sends the event to matching subscriber) to the new data site assignment created for the particular result of the executed query (C8 L38-51, C11 L23-52, C14 L26 – C16 L3).

Claim 22

31. Bracho, in view of Cheng, discloses the limitations above. Furthermore, Bracho discloses the following limitations:

p. executing the query (expression string) against portions of the application data to identify at least one result comprises identifying an association (whether match exists) between a value for an attribute (location of customer) of the type of data (event) to be distributed to data sites and a record (customer lives in Los Angeles) within the application data (what subscriber specified) (C11 L23-52, C15 L6-25); and

q. identifying at least one of the data sites (subscriber) to which the type of data is to be distributed using the at least one result of the executed query comprises identifying, using the record, a data site to which the record is associated (C8 L38-51, C11 L23-52, C15 L6-25).

Claim 23

32. Bracho, in view of Cheng, discloses the limitations above. Furthermore, Bracho discloses the following limitations:

r. identifying at least one of the data sites (subscriber) to which the type of data is to be distributed using the at least one result of the executed query (expression string) comprises identifying at least one of the data sites through indirect association (time-to-live is less than) of

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the at least one result (match) of the executed query and another data structure (time-spent field) within the application data (C8 L38-51, C11 L23-52).

Claim 24

33. Bracho, in view of Cheng, discloses the limitations above. Furthermore, Bracho discloses the following limitations:

- s. executing the query against portions of the application data to identify at least one result comprises: identifying an attribute value (Los Angeles) for an attribute (location of customer) of the type of data (event type) to be distributed to data sites (subscribers) (C11 L23-52, C15 L6-25);
- t. executing a query (filter) against portions of the application data to identify at least one employee record (matching subscriber) that matches the attribute value (C15 L6-38); and
- u. identifying at least one of the data sites through indirect association of the at least one result of the executed query and another data structure within the application data comprises (C8 L38-51, C11 L23-52):
 - v. accessing a record (envelope) for the identified employee (subscriber) in a site assignment data structure (envelope data structure) (figure 8, C14 L25 - C15 L58); and
 - w. identifying a data site (hub) for the identified employee (subscriber) based on the accessed record in the site assignment data structure (figure 8, C14 L25 - C15 L58).

34. It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute "subscriber" for "employee" because an employee is a type of subscriber; subscribers encompasses a plurality of people; and subscriptions can be for commercial enterprises with employees (Bracho abstract, C1 L25-55).

Claim 25

35. Bracho, in view of Cheng, discloses the limitations above. Furthermore, Bracho discloses the following limitations:

- x. receiving a user input identifying a distribution criterion that defines the basis upon which the type of data is to be distributed to the data sites further comprises receiving user input (subscription) identifying multiple criteria attributes (various types of content filters) that are linked for purposes of generating data subscriptions (C8 L38-51, C11 L23 – C12 L45); and
- y. executing the query against portions of the application data to identify at least one result further comprises:
 - z. identifying attribute values (e.g. customer location) of each of the multiple criteria attributes for the type of data to be distributed to data sites (subscribers) (C8 L38-51, C11 L23 – C12 L45, C15 L6-25); and
 - aa. executing a query (expression string) against portions of the application data to identify at least one result (event) that matches all of the identified attribute values (match certain criteria) of each of the multiple criteria attributes for the type of data to be distributed to data sites (C8 L38-51, C11 L23 – C12 L45).

Claim 26

36. Bracho, in view of Cheng, discloses the limitations above. Furthermore, Bracho discloses the following limitations:

- bb. the distribution criterion (filter) further comprises data defining relationships between database tables (data structures) that store the application data (figures 6, 10, 12, C11 L23 – C12 L45); and
- cc. identifying at least one of the data sites to which the type of data is to be distributed further comprises traversing, using the data defining relationships between database tables that store the application data, multiple database table structures (data structures) to identify the at least one of the data sites (subscriber - hub) to which the type of data is to be distributed (figures 6, 10, 12, C11 L23 – C12 L45).

37. **Examiner's Note:** The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Double Patenting

38. The provisional double patenting rejection is maintained from the previous office action. Please see below.

39. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

40. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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41. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

42. Claims 1, 10, and 19 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 7, and 15 of copending Application No. 10784196. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter of the instant application would have been obvious to one of ordinary skill in the art in light of the disclosure of application 10784196. Claims 1, 7, and 15 of application 10784196 are directed to accessing the type of data to be distributed and the distribution criterion, and generating data subscriptions based upon the type of data and the distribution criteria (see Application No. 10784196 claims 1, 7, and 15). Claims 1, 10, and 19 of the instant application are directed to receiving information from a user for use in generating data subscriptions with steps for the following: receiving data and a distribution criterion; storing distribution criteria and the type of data to be distributed; and for generating data subscriptions based on the type of data to be distributed. The instant application would have been obvious to one of ordinary skill in the art in light of claims 1, 7, and 15 of application 10784196 because if the data and distribution criterion can be accessed, then the person of ordinary skill would have received and stored this information in order to generate the data distribution.

43. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

44. Applicant argues that Bracho in view of Cheng does not disclose the amended claims (Amendment p 7-9). Examiner respectfully disagrees, and points to the rejection above.

Conclusion

45. Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Chrystina Zelaskiewicz** whose telephone number is **571.270.3940**. The Examiner can normally be reached on

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Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **Andrew Fischer** can be reached at **571.272.6779**.

46. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> <<http://pair-direct.uspto.gov>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

/Christina Zelaskiewicz/
Examiner, Art Unit 3621
December 15, 2008

/ANDREW J. FISCHER/
Supervisory Patent Examiner, Art Unit 3621